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the adhesive core film layer has microvoids in a range of about 27.6% to about 42%; and further wherein the adhesive core film layer is bonded to the outer monolithic film layers along an interface, the bonding at the interface being substantially complete and uniform.

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## II. REMARKS

### Preliminary Remarks

As a convenience to the examiner, attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached appendix is captioned "Version with markings to show changes made".

This response is timely filed as the deadline for taking action (no fee due) fell on Saturday, November 23, 2002. This amendment/response is being filed on the first following day (November 25, 2002), wherein the Patent Office is conducting normal business operations.

Support for the foregoing amendment to claims 26 and 32 is found specifically in the specification as originally filed at pages 53 and 54. No new matter is believed to have been introduced herein.

### Patentability Remarks

#### 35 U.S.C. § 112, First Paragraph

At Paragraph 2 of the official action the examiner rejected claims 26-29 and 32 under 35 U.S.C. § 112, first paragraph as allegedly containing subject matter that was not described in the specification in such a way to convey that, at the time the application was filed, the inventor was in possession of the claimed invention. With respect to claims 26 and 32, the examiner has alleged that the language "at least 26.7%" is not supported by the specification.

The applicant submits that this rejection is now moot. For the purposes of expediting prosecution and without prejudice to the applicant's right to seek a similar claim in a duly filed continuing application, the applicant has replaced the language referred to by the examiner with "microvoids in a range from about 27.6% to about 42%." In view of the foregoing the applicant requests withdrawal of the rejection based upon 35 U.S.C. § 112, first paragraph.

35 U.S.C. § 102(e)

The examiner, in Paragraph 6 of the official action, rejected claims 26-29 and 32 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,075,179 (hereinafter the '179 patent). In view of the examiner's lengthy comments, the applicant respectfully traverses.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The applicant submits that the '179 patent cannot, as a matter of law, properly anticipate the present claimed invention (as defined by claims 26-29 and 32) in that "each and every element as set forth in the claim" is not described in the cited patent. While the applicant's claimed invention requires that layer D comprise a microporous adhesive layer for bonding said C layers together (claim 26) or requires that layer D comprise an adhesive layer for bonding said C layers together (claim 32), the '179 does not, either expressly or inherently, describe the use of an adhesive layer. Therefore, as stated above, the cited patent cannot anticipate the applicant's claimed invention.


In view of the foregoing the applicant requests that rejection of claims 26-29 and 32 under 35 U.S.C. § 102(e) be withdrawn.

**III. CONCLUSION**

The applicant respectfully submits that the claims are now in a condition for allowance and request that such action be undertaken. Should the examiner wish to discuss this matter or any other matter related to the present application, the examiner is **strongly urged** to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

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Enclosure: Appendix

APPENDIX

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

*Claims 26 and 32 were amended as follows.*

26. (Three Times Amended) A multilayer breathable film having the combination of properties of:

- (i) providing a barrier to microorganisms; and
- (ii) providing a barrier to blood and bodily fluids;

said breathable film comprising at least a three-layer film having as a minimum the following structure:

C:D:C;

where C comprises an outer monolithic layer containing a hydrophilic polymeric resin capable of absorbing and desorbing moisture and providing a barrier to water and microorganisms, said C layer being substantially free of particulate filler; and, D comprises a microporous adhesive core layer for bonding said C layers together, wherein said C layer substantially prevents the buildup of particulate filler material on a die during formation of said multilayer breathable film, and wherein said microporous adhesive core layer comprises particulate filler having an average particle size between about .8 microns and about 3 microns, where upon stretching the microporous adhesive the core layer has [at least 27.6%] microvoids in a range from about 27.6% to about 42%, said microporous adhesive core layer being constructed and arranged to provide the passage of gaseous water but substantially prevent the passage of liquid water.

32. (Amended) A multilayer breathable film having the combination of properties of:

- (i) providing a barrier to microorganisms; and
- (ii) providing a barrier to blood and bodily fluids;

said breathable film comprising at least a coextruded three-layer film having as a minimum the structure C:D:C; wherein C comprises an outer monolithic film layer containing a hydrophilic polymeric resin capable of absorbing and desorbing moisture and providing a barrier to water and microorganisms, said C layer being substantially free of particulate filler; and, D comprises an adhesive core film layer for bonding said C layers together, the adhesive core film layer including micropores, the micropores being constructed and arranged to permit the passage of gaseous water and to provide a barrier to the passage of liquid water;

wherein said adhesive core film layer further comprises particulate filler having an average particle size between about .8 microns and about 3 microns, where upon stretching the adhesive core film layer has [at least 27.6%] microvoids in a range of about 27.6% to about 42%; and further wherein the adhesive core film layer is bonded to the outer monolithic film layers along an interface, the bonding at the interface being substantially complete and uniform.

End of Appendix